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# MULTIMEDIA UNIVERSITY

## FINAL EXAMINATION

TRIMESTER 2, 2021/2022

### UEQ 3622 – EQUITY & TRUSTS II

(All Sections / Groups)

27 APRIL 2022

Reading Time: 9:00 A.M. – 9:15 A.M.

(15 Minutes)

Answering Time: 9:15 A.M. – 12:15 P.M.

(3 Hours)

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#### INSTRUCTIONS TO STUDENT

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes **ONLY** in their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.
2. This Question paper consists of **Four** pages with **Four** Questions only.
3. **Questions One to Three are compulsory. Attempt Either Question Four A OR Question Four B.** All questions carry equal marks and the distribution of the marks for each question is given.
4. Students are allowed to bring in **CLEAN** and **ORIGINAL** copies of the following statutes into the Examination Hall:
  - i) Trustees Act 1949
  - ii) Specific Relief Act 1950“Clean” is defined to include no tagging, no annotation either by the publisher or anyone else, and no erased marking. Highlighting and underlining are also prohibited.
5. Please write all your answers in the Answer Booklet provided.

**ATTEMPT ALL QUESTIONS****QUESTION 1**

“The duties imposed upon trustees with respect to the distribution of trust assets are essentially the same whether they hold those assets subject to a discretionary trust in favour of a class of beneficiaries or subject to a fiduciary power of appointment in favour of that class. Since it is perfectly acceptable to confer an intermediate power of appointment on trustees, it must now be acceptable to create an intermediate discretionary trust for everyone in the world except the trustees.”

Discuss the above with reference to the relevant authorities with relation to intermediate power of appointment.

(TOTAL: 25 Marks)

**QUESTION 2**

The powerful nature of liability for breach of trust can in some circumstances produce unfairness. In order to ensure that liability for breach of trust is not entirely overpowering, and to protect trustees from unscrupulous or culpable beneficiaries, there are a recognised number of defences to a claim of breach of trust.

Discuss the statement above with reference to appropriate case laws and relevant legal articles.

(TOTAL: 25 Marks)

**Continued...**

**QUESTION 3**

Howard Wollowitz and Sheldon Cooper have committed some breaches of trust. The breaches are as follows:

- (a) Howard Wollowitz is a trustee of RM1 million for his two beneficiaries, Rajesh Koothrapali and Leonard Hofstadter. He deposited this money at the Big Bang Bank of Malaysia. Howard's wife, Bernadette has been pressuring him to buy a beautiful red brick house in Sungai Long Estates. So, he withdrew RM500,000.00 from the trust fund and used RM70,000.00 out of the RM500,000.00 to pay a 10% deposit on the house. He then gifted his wife RM50,000.00 and Bernadette bought some expensive jewellery with the money. He also gave his mother, Mrs Wolowitz, RM130,000.00 as a gift. Mrs Wolowitz bought a sleek Toyota for RM 100,000 and bought a new NotSoEasy Bake oven with a balance of RM30,000.00 for her granddaughter, Penny. The remaining RM250,000.00 was used to invest in shares in Youflix (an online streaming coming).

(12 Marks)

- (b) Sheldon Cooper is a trustee and misappropriated RM60,000.00 from a trust fund meant for Stuart. He deposited the money into his current account ("C.A"). He withdrew RM20,000.00 and invested in some pink chip equities in Russo Brothers Inc. The investment had returns of RM40,000.00 of which he deposited RM20,000.00 into his C.A. The balance RM20,000.00 he used to buy Moon Wars antiques that cost RM15,000.00 which he believed was for a bargain because he thought they were worth RM20,000.00. He was happy for a while, but he later found out that the Moon Wars antiques were merely an imitation from China and only worth RM5,000.00. Sheldon was also lucky and hit the 10D Jackpot, and won RM 10,000 which he also deposited into his C.A. Lastly, he gave RM10,000.00 to his girlfriend Amy Fowler to help open up her comic book store. The comic book store was successful and is now worth RM30,000.00.

(13 Marks)

Rajesh Koothrapali, Leonard Hofstadter and Stuart have found RM500,000.00 and RM60,000.00 missing from their respective trust funds. They come to ask your advice on which is the preferred method of tracing for their individual problems. Advise them as to the best method of tracing for their respective situations and with reasons.

(TOTAL: 25 Marks)

**Continued...**

**ATTEMPT EITHER****QUESTION 4A**

Last year, the Malaysian Society of Woodwind Players received a sizeable donation of RM1,500,000.00 from a benefactor. The society's board of directors decided to use a large portion of the donation to build a state-of-the-art school for woodwind players. The balance was to be invested, the returns from which would allow for the school's maintenance, equipment, teaching materials, etc., and small endowments to deserving students.

The society contacted Mr Zahidi, who ran Yayasan Akal Malaysia, to assist in this matter. After many elaborate and expensive meetings, the directors of the society had contracted Mr Zahidi to do the following:

- i) Locate, negotiate the purchase of and execute the purchase of a suitable plot of land for the construction of the said school;
- ii) Select a suitable architect and contractor, and negotiate and execute the construction of the said school; and
- iii) Manage the funds set aside as investment.

RM1,000,000.00 was to be used for the school whilst the remaining amount was earmarked for investment. This sum was duly transferred to the foundation.

After six months had elapsed with no forthcoming updates, the directors of the society enquired with the foundation as to the status of their project. At this point, they realised that some serious mistakes had been made. Firstly, the directors had a difficult time finding the right person to communicate with at the foundation. Secondly, they found out that no work had begun by the foundation on behalf of the society. After two more months, Ms Hidayah, the person in charge of the matter at the foundation, communicated to the directors of the society that the foundation could not proceed to assist them as there were simply no instructions or records on the matter in the foundation. The foundation was not hired to do any work for the society. When asked about the funds transferred to the foundation, Ms Hidayah explained that there were no such funds in the foundation's accounts.

Frustrated, the directors of the society hired you to assist them in getting to the bottom of things. You have since discovered that the said funds were transferred out of the foundation's account and into a personal account in Bank Alakazam in Mr Zahidi's name shortly after the contracts were executed.

You have come to understand that the source of this problem was an error made by the directors when negotiating the contract. You advised them as follows:

**Continued...**

- i) The directors believed that they were negotiating with Mr Zahidi as a representative of the foundation;
- ii) The directors believed that the contract they executed appointed the foundation to do the relevant work for the society;
- iii) The contract was not between the society and the foundation; and
- iv) The contract did not appoint the foundation to do the relevant work for the society.

You have also attempted to communicate with Mr Zahidi to resolve this misunderstanding. Unfortunately, all your attempts to bring him to a negotiating table have been in vain.

The directors have instructed you to amend the contract as they had originally intended and make one last attempt to meet with Mr Zahidi, failing which you are to initiate legal action against him. You have communicated this to him and his lawyers. The next day, his lawyers informed you that Mr Zahidi is unwell, that he is suffering from debilitating back pain and is going to Germany for treatment. As a result, he will not be able to meet with you in the foreseeable future. Based on his latest high-profile public appearances, you do not believe this to be true.

Advise your clients on relevant and suitable remedies against the foundation and Mr Zahidi.

(TOTAL: 25 Marks)

**OR**

**QUESTION 4B**

“In my opinion [the principle that an injunction may be issued to protect a right that exists which can be asserted either at law or in equity] applies to a creditor who has a right to be paid the debt owing to him, even before he has established his right by getting judgment for it. If it appears that the debt is due and owing, there is a danger that the debtor may dispose of his assets so as to defeat it before judgment, the court has jurisdiction in a proper case to grant interlocutory judgment so as to prevent him disposing of the assets.” – Lord Denning in *Mareva Compania Naviera SA v International Bulk Carriers SA* [1975] 2 Lloyd’s Rep 509, CA.

The statement above was made by Lord Denning in considering applying what would come to be commonly known as a Mareva injunction. Analyse whether the elements of this injunction are still relevant and effective today. Examine what changes or revisions are necessary to the said elements to affect a better solution.

(TOTAL: 25  
Marks)

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